

Office of the Attorney General
State of North Dakota

Opinion No. 84-37

Date Issued: November 14, 1984

Requested by: Lee Christofferson
Rolette County State's Attorney

--QUESTION PRESENTED--

I.

Whether school officials are required to obtain parental consent before a child is interviewed at school by a protective service worker regarding a report of suspected child abuse or neglect.

II.

Whether school officials are immune from liability if they permit an investigative interview with a child.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that school officials are not required to obtain parental consent before a child is interviewed at school by a protective service worker regarding a report of suspected child abuse or neglect.

II.

It is my further opinion that school officials have a limited immunity from liability if they permit an investigative interview with a child.

--ANALYSES--

I.

A school system can lose funding from the federal government if it has a policy of releasing students' educational records without obtaining parental consent. 20 U.S.C. 1232(g). Diligence in obtaining parental consent for the release of information, among other concerns, has led some schools to extend their policy to exclude contact by outsiders with the child unless parental consent has been obtained. No law prohibits such contacts. Permitting the interviewing of children by protective service workers is not a release of

educational records. We are aware of no law which requires the school to obtain parental permission prior to such interviewing. Given that parents are possible perpetrators of the suspected abuse or neglect, the seeking of parental permission prior to an interview may not only obstruct the protection of the child but may promote further harm to the child.

Under circumstances in which the fulfillment of their mandated investigative duties make it reasonable to contact children in school, the protective service worker should inform a school administrator of the need to speak to the child. In doing so, the protective service worker may give a limited explanation of the child abuse report to the administrator in order to satisfy any concern over the need for the interview. The protective service worker is authorized to make the explanation under Section 50-25.1-11(5) of the North Dakota Century Code. However, the administrator is prohibited from further disclosing this information to any person including the child's parents.

II.

Section 50-25.1-09, N.D.C.C., states:

50-25.1-09. IMMUNITY FROM LIABILITY. Any person, other than the alleged violator, participating in good faith in the making of a report or in providing protective services under this chapter, is immune from any liability, civil or criminal, that otherwise might result. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or neglect shall be presumed.

This provides immunity for school officials to the extent that their actions are part of the process of making a report or part of the process of providing protective services for the child.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

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